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CREDITORS INTERCHANGE RECEIVABLE MANAGEMENT, LLC

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10
11 ROBIN BROWNDORF,

12 Plaintiff,

13 v.

14 CREDITORS INTERCHANGE
15 RECEIVABLE MANAGEMENT,
LLC,

16 Defendant.

CASE NO. CV11-02815 PSG

STIPULATED PROTECTIVE ORDER
FOR STANDARD LITIGATION

17
18
19 1. PURPOSE AND LIMITATIONS

20
21 Disclosure and discovery activity in this action are likely to involve
22 production of confidential, proprietary, or private information for which special
23 protection from public disclosure and from use for any purpose other than
24 prosecuting this litigation may be warranted. Accordingly, the parties hereby
25 stipulate to and petition the court to enter the following Stipulated Protective Order.
26 The parties acknowledge that this Order does not confer blanket protections on
27 disclosures or responses to discovery and that the protection it affords from public
28 disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles. The parties
 2 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
 3 Protective Order does not entitle them to file confidential information under
 4 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
 5 standards that will be applied when a party seeks permission from the court to
 6 file material under seal.

7 8 2. DEFINITIONS

9
10 2.1 Challenging Party: a Party or Non-Party that challenges the
 11 designation of information or items under this Order.

12 2.2 "CONFIDENTIAL" Information or Items: information
 13 (regardless of how it is generated, stored or maintained) or tangible things that
 14 qualify for protection under Federal Rule of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and
 16 House Counsel (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates
 18 information or items that it produces in disclosures or in responses to discovery as
 19 "CONFIDENTIAL."

20 2.5 Disclosure or Discovery Material: all items or information,
 21 regardless of the medium or manner in which it is generated, stored, or
 22 maintained (including, among other things, testimony, transcripts, and tangible
 23 things), that are produced or generated in disclosures or responses to discovery in
 24 this matter.

25 2.6 Expert: a person with specialized knowledge or experience in
 26 a matter pertinent to the litigation who has been retained by a Party or its
 27 counsel to serve as an expert witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to
2 this action. House Counsel does not include Outside Counsel of Record or any
3 other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation,
5 association, or other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of
7 a party to this action but are retained to represent or advise a party to this action
8 and have appeared in this action on behalf of that party or are affiliated with a
9 law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers,
11 directors, employees, consultants, retained experts, and Outside Counsel of
12 Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces
14 Disclosure or Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide
16 litigation support services (e.g., photocopying, videotaping, translating,
17 preparing exhibits or demonstrations, and organizing, storing, or retrieving data
18 in any form or medium) and their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that
20 is designated as "CONFIDENTIAL."

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 24 3. SCOPE

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26 The protections conferred by this Stipulation and Order cover not
27 only Protected Material (as defined above), but also (1) any information copied
28 or extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
 2 presentations by Parties or their Counsel that might reveal Protected Material.
 3 However, the protections conferred by this Stipulation and Order do not cover
 4 the following information: (a) any information that is in the public domain at the
 5 time of disclosure to a Receiving Party or becomes part of the public domain after
 6 its disclosure to a Receiving Party as a result of publication not involving a
 7 violation of this Order, including becoming part of the public record through trial
 8 or otherwise; and (b) any information known to the Receiving Party prior to the
 9 disclosure or obtained by the Receiving Party after the disclosure from a source
 10 who obtained the information lawfully and under no obligation of confidentiality
 11 to the Designating Party. Any use of Protected Material at trial shall be governed
 12 by a separate agreement or order.

13 14 4. DURATION

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16 Even after final disposition of this litigation, the confidentiality
 17 obligations imposed by this Order shall remain in effect until a Designating Party
 18 agrees otherwise in writing or a court order otherwise directs. Final disposition
 19 shall be deemed to be the later of (1) dismissal of all claims and defenses in
 20 this action, with or without prejudice; and (2) final judgment herein after the
 21 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
 22 this action, including the time limits for filing any motions or applications for
 23 extension of time pursuant to applicable law.

24 25 5. DESIGNATING PROTECTED MATERIAL

26
27 5.1 Exercise of restraint and Care in Designating Material for
 28 Protection. Each Party or Non-Party that designates information or items for

1 protection under this Order must take care to limit any such designation to
 2 specific material that qualifies under the appropriate standards. The
 3 Designating Party must designate for protection only those parts of material,
 4 documents, items, or oral or written communications that qualify – so that other
 5 portions of the material, documents, items, or communications for which
 6 protection is not warranted are not swept unjustifiably within the ambit of this
 7 Order.

8 Mass, indiscriminate, or routinized designations are prohibited.
 9 Designations that are shown to be clearly unjustified or that have been made
 10 for an improper purpose (e.g., to unnecessarily encumber or retard the case
 11 development process or to impose unnecessary expenses and burdens on other
 12 parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or
 14 items that it designated for protection do not qualify for protection, that
 15 Designating Party must promptly notify all other Parties that it is withdrawing the
 16 mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise
 18 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
 19 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
 20 protection under this Order must be clearly so designated before the material is
 21 disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic
 24 documents, but excluding transcripts of depositions or other pretrial or trial
 25 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
 26 each page that contains protected material. If only a portion or portions of the
 27 material on a page qualifies for protection, the Producing Party also must clearly
 28

1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 A Party or Non-Party that makes original documents or materials
4 available for inspection need not designate them for protection until after the
5 inspecting Party has indicated which material it would like copied and produced.
6 During the inspection and before the designation, all of the material made
7 available for inspection shall be deemed "CONFIDENTIAL." After the
8 inspecting Party has identified the documents it wants copied and produced, the
9 Producing Party must determine which documents, or portions thereof, qualify
10 for protection under this Order. Then, before producing the specified
11 documents, the Producing Party must affix the "CONFIDENTIAL" legend to
12 each page that contains Protected Material. If only a portion or portions of the
13 material on a page qualifies for protection, the Producing Party also must clearly
14 identify the protected portion(s) (e.g., by making appropriate markings in the
15 margins).

16 (b) for testimony given in deposition or in other pretrial or trial
17 proceedings, that the Designating Party identify on the record, before the close of
18 the deposition, hearing, or other proceeding, all protected testimony.

19 (c) for information produced in some form other than
20 documentary and for any other tangible items, that the Producing Party affix in
21 a prominent place on the exterior of the container or containers in which the
22 information or item is stored the legend "CONFIDENTIAL." If only a portion or
23 portions of the information or item warrant protection, the Producing Party, to the
24 extent practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an
26 inadvertent failure to designate qualified information or items does not, standing
27 alone, waive the Designating Party's right to secure protection under this Order for
28 such material. Upon timely correction of a designation, the Receiving Party

1 must make reasonable efforts to assure that the material is treated in
2 accordance with the provisions of this Order.

3
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5
6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 Designating Party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption
10 or delay of the litigation, a Party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after
12 the original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the
14 dispute resolution process by providing written notice of each designation it is
15 challenging and describing the basis for each challenge. To avoid ambiguity as
16 to whether a challenge has been made, the written notice must recite that the
17 challenge to confidentiality is being made in accordance with this specific
18 paragraph of the Protective Order. The parties shall attempt to resolve each
19 challenge in good faith and must begin the process by conferring directly (in
20 voice to voice dialogue; other forms of communication are not sufficient) within
21 14 days of the date of service of notice. In conferring, the Challenging Party
22 must explain the basis for its belief that the confidentiality designation was not
23 proper and must give the Designating Party an opportunity to review the
24 designated material, to reconsider the circumstances, and, if no change in
25 designation is offered, to explain the basis for the chosen designation. A
26 Challenging Party may proceed to the next stage of the challenge process only if
27 it has engaged in this meet and confer process first or establishes that the
28

1 Designating Party is unwilling to participate in the meet and confer process in a
2 timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
4 without court intervention, the Designating Party shall file and serve a motion
5 to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil
6 Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
7 within 14 days of the parties agreeing that the meet and confer process will not
8 resolve their dispute, whichever is earlier. Each such motion must be
9 accompanied by a competent declaration affirming that the movant has complied
10 with the meet and confer requirements imposed in the preceding paragraph.
11 Failure by the Designating Party to make such a motion including the required
12 declaration within 21 days (or 14 days, if applicable) shall automatically waive
13 the confidentiality designation for each challenged designation. In addition, the
14 Challenging Party may file a motion challenging a confidentiality designation at
15 any time if there is good cause for doing so, including a challenge to the
16 designation of a deposition transcript or any portions thereof. Any motion
17 brought pursuant to this provision must be accompanied by a competent
18 declaration affirming that the movant has complied with the meet and confer
19 requirements imposed by the preceding paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on
21 the Designating Party. Frivolous challenges, and those made for an improper
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
23 parties) may expose the Challenging Party to sanctions. Unless the Designating
24 Party has waived the confidentiality designation by failing to file a motion to
25 retain confidentiality as described above, all parties shall continue to afford the
26 material in question the level of protection to which it is entitled under the
27 Producing Party's designation until the court rules on the challenge.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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3 7.1 Basic Principles. A Receiving Party may use Protected

4 Material that is disclosed or produced by another Party or by a Non-Party in

5 connection with this case only for prosecuting, defending, or attempting to settle

6 this litigation. Such Protected Material may be disclosed only to the categories

7 of persons and under the conditions described in this Order. When the

8 litigation has been terminated, a Receiving Party must comply with the

9 provisions of section 13 below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving

11 Party at a location and in a secure manner that ensures that access is limited to the

12 persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

14 Unless otherwise ordered by the court or permitted in writing by the

15 Designating Party, a Receiving Party may disclose any information or item

16 designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this

18 action, as well as employees of said Outside Counsel of Record to whom it is

19 reasonably necessary to disclose the information for this litigation and who have

20 signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto

21 as Exhibit A;

22

23 (b) the officers, directors, and employees (including House

24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary

25 for this litigation and who have signed the "Acknowledgment and Agreement to

26 Be Bound" (Exhibit A);

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(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its

possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

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1 12. MISCELLANEOUS

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3 12.1 Right to Further Relief. Nothing in this Order abridges the
4 right of any person to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of
6 this Protective Order no Party waives any right it otherwise would have to
7 object to disclosing or producing any information or item on any ground not
8 addressed in this Stipulated Protective Order. Similarly, no Party waives any
9 right to object on any ground to use in evidence of any of the material covered by
10 this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all
13 interested persons, a Party may not file in the public record in this action any
14 Protected Material. A Party that seeks to file under seal any Protected Material
15 must comply with Civil Local Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific
17 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order
18 will issue only upon a request establishing that the Protected Material at issue is
19 privileged, protectable as a trade secret, or otherwise entitled to protection under
20 the law. If a Receiving Party's request to file Protected Material under seal
21 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
22 Party may file the information in the public record pursuant to Civil Local Rule
23 79-5(e) unless otherwise instructed by the court.

24
25 13. FINAL DISPOSITION

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27 Within 60 days after the final disposition of this action, as defined in
28 paragraph 4, each Receiving party must return all Protected Material to the

1 Producing Party or destroy such material. As used in this subdivision, "all
 2 Protected Material" includes all copies, abstracts, compilations, summaries, and
 3 any other format reproducing or capturing any of the Protected Material.
 4 Whether the Protected Material is returned or destroyed, the Receiving Party must
 5 submit a written certification to the Producing Party (and, if not the same person
 6 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
 7 category, where appropriate) all the Protected Material that was returned or
 8 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 9 abstracts, compilations, summaries or any other format reproducing or capturing
 10 any of the Protected Material. Notwithstanding this provision, Counsel are
 11 entitled to retain an archival copy of all pleadings, motion papers, trial,
 12 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 13 and trial exhibits, expert reports, attorney work product, and consultant and
 14 expert work product, even if such materials contain Protected Material. Any such
 15 archival copies that contain or constitute Protected Material remain subject to
 16 this Protective Order as set forth in Section 4 (DURATION).

17
 18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19
 20 DATED: October 18, 2011

LAW OFFICES OF WILLIAM E. KENNEDY

21
 22 By: /s/ William E. Kennedy

23 William E. Kennedy
 24 Attorneys for ATTORNEYS FOR
 25 PLAINTIFF, ROBIN BROWNDORF
 26
 27
 28

1 DATED: October 18, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

2
3 By: /s/ Larissa G. Nefulda

Stephen H. Turner

Larissa G. Nefulda

4 Attorneys for ATTORNEYS FOR
5 DEFENDANT, CREDITORS
6 INTERCHANGE RECEIVABLE
7 MANAGEMENT

8
9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10
11
12 DATED: October 20, 2011

Paul S. Gend
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BOUND

1, _____, of _____,
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for
 the Northern District of California on _____ in the case of
 _____. I agree to comply with and to be bound by
 all the terms of this Stipulated Protective Order and I understand and
 acknowledgment that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District
 court for the Northern District of California for the purpose of enforcing the terms of
 his Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ of
 _____, (____-) as my California agent
 for service of process in connection with this action or any proceedings related to
 enforcement of this Stipulated Protective Order.

DATE: October _____, 2011

City and State where sworn and signed: _____

Print Name: _____

Signature: _____